

STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
FRANCHISE INVESTMENT LAW

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations ("Commissioner") sets forth below the reasons for the proposed amendment to Rule 310.101 of the California Code of Regulations (10 C.C.R. Sec. 310.101).

The Department of Corporations ("Department") regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration. The FIL provides several exemptions from registration.

Senate Bill 459 (Chapter 325, Statutes 1999), which became effective on January 1, 2000, added Section 31108 of the Corporations Code under the FIL to provide an exemption from the registration requirements for an offer or sale of a franchise in this state, if the franchise involves adding a new product or service line to an existing business of a prospective franchisee and the following requirements are met:

1. The prospective franchisee (or an existing officer, director, or managing agent of the prospective franchisee who has held that position for at least the last 24 months) has been engaged in a business offering products or services substantially similar or related to those to be offered by the franchised business for at least the last 24 months.
2. The new product or service is substantially similar or related to the product or service being offered by the prospective franchisee's existing business.
3. The franchised business is to be operated from the same business location as the prospective franchisee's existing business.
4. The parties anticipated, in good faith, that sales resulting from the franchised business will not represent more than 20% of the total sales in dollar volume of the franchisee on an annual basis.
5. The prospective franchisee is not controlled by the franchisor.

In order for a transaction to qualify for the claim of exemption pursuant to Corporations Code Section 31108, subdivision (f) of Corporations Code Section 31108 requires the franchisor to file a notice of exemption with the Commissioner (i.e., with the Department) prior to and within the same calendar year as the sale of the franchise. The filing fee, as prescribed in Corporations Code Section 31500(f), must accompany the notice.

Rule 310.101 sets forth the notice of exemption to be used in claiming the exemption under either Section 31101 or 31104 of the Corporations Code. Since the statutory provisions of these two sections that require the filing of a notice of exemption are similar to the notice filing provision

contained in Corporations Code Section 31108, and in order to fully implement SB 459, the Commissioner proposes to amend Rule 310.101 to also require the use of this notice of exemption form for purposes of the new exemption under Corporations Code Section 31108.

Subsection (a) of Rule 310.101 sets forth the form of the notice of exemption. The Commissioner proposes to amend this subsection to include the notice of exemption required under Corporations Code Section 31108.

Subsection (b) sets forth the instructions for the notice. The Commissioner proposes to amend this subsection to (1) make conforming changes resulting from the addition of the exemption under Corporations Code Section 31108 to the notice, (2) update the year reference given in the example, (3) clarify that the "material modification" exception applies only to the exemption under Section 31101 and 31104 of the Corporations Code (a similar exception for material modifications was not included in the Section 31108 exemption), and (4) make minor, nonsubstantive changes.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses.

The Commissioner has determined that amending the notice contained in Rule 310.101 to include the exemption provided by Corporations Code Section 31108 is the most economical and less burdensome to affected parties. A new notice form is not needed as the information requested by the Rule 310.101 notice will assist in validating that the franchisor meets the requirements of the Section 31108 exemption.

FISCAL IMPACT

Cost to Local Agencies and School Districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. No other nondiscretionary cost or savings are imposed on local agencies.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.